

U.S. EPA's Sediment Remediation Project Coordinator and to MDEQ's Sediment Remediation Project Coordinator. U.S. EPA Region 5 shall send all notices, comments, correspondence, or other documents to TPI's Sediment Remediation Project Coordinator. Submission of all plans, reports, notices, comments, correspondence or other documents shall be effective as of the date of mailing.

51. In addition to the procedures set forth in Paragraph 50, U.S. EPA's Sediment Remediation Project Coordinator shall transmit a copy of all written or electronic correspondence that he/she transmits to TPI's Sediment Remediation Project Coordinator to the following person:

Steven O. Epperson  
Vice President, Environmental, Health & Safety  
Ultramar Diamond Shamrock Corporation  
P.O. Box 696000  
San Antonio, Texas 78269-6000  
or, for express mail:  
6000 North Loop 1604 West  
San Antonio, TX 78249-1112  
Phone: (210) 592-4623  
Email: steve\_epperson@udscorp.com

By written agreement with U.S. EPA's Sediment Remediation Project Coordinator, TPI may change the person whom U.S. EPA's Sediment Remediation Project Coordinator copies on all written and electronic correspondence. Disputes over any such substitution shall be resolved in accordance with the administrative dispute resolution provisions of Paragraph 41.

**G. FINANCIAL OBLIGATIONS AND LIMITATIONS**

52. By no later than sixty (60) days following entry of this Decree, TPI shall deposit nine million dollars (\$9,000,000) in an account ("Horse Creek and Pine River Sediment Remediation Account" or "Sediment Remediation Account" or "Account") bearing interest on commercially reasonable terms in a federally-insured bank. For the purpose of maximizing interest while

minimizing risk, TPI is authorized to deposit this money in a money market fund investing in United States government obligations.

53. By no later than thirty (30) days following the deposit of funds in accordance with Paragraph 52, TPI shall provide notice to the Department of Justice, the Office of Regional Counsel of U.S. EPA Region 5, and U.S. EPA's Sediment Remediation Project Coordinator of the identity of the bank and bank account into which the funds were deposited; the rate of interest that will be paid and any agreement concerning the determination of interest rates; a copy of the transmittal letter and wire transfer by which the nine million dollars (\$9,000,000) was deposited; and a bank statement showing the deposit of the funds. After the initial deposit of funds, TPI shall provide copies of all periodic statements from the Sediment Remediation Account to U.S. EPA's Sediment Remediation Project Coordinator.

54. TPI shall utilize all funds deposited into the Sediment Remediation Account and all interest accruing in the Sediment Remediation Account for the exclusive purpose of funding the Sediment Remediation Project set forth in Section VI of this Decree.

55. Except as specifically provided in Paragraph 56, in no event shall TPI be required to deposit any funds, other than the initial deposit of nine million dollars (\$9,000,000) in the Sediment Remediation Account, nor shall TPI be otherwise obligated to spend more than the principal and interest accruing in the Sediment Remediation Account to implement and complete all of the studies, plans, tasks, obligations, and remediation work which TPI has agreed to undertake pursuant to Section VI of this Consent Decree and pursuant to the approved plans and reports submitted under Section VI of this Consent Decree. Except as specifically provided in Paragraph 56, after the funds, in the amount of nine million dollars (\$9,000,000) plus any interest accrued thereon, are exhausted

from the Sediment Remediation Account, TPI shall have no obligation to perform any of the tasks described in Section VI , including but not limited to any of the studies, plans, tasks, obligations, and/or remediation work which TPI has agreed to undertake pursuant to this Consent Decree.

56. In drawing down funds from the Sediment Remediation Account, TPI shall leave sufficient funds in the Account to enable TPI to prepare and submit a Sediment Remediation Project Completion Report, and prepare and submit one resubmission based upon and incorporating comments received from U.S. EPA on the first submission. If TPI leaves insufficient funds in the Account to enable it to prepare and submit a Sediment Remediation Project Completion Report and one resubmission, TPI shall independently provide funds to enable it to do so. Provided that TPI incorporates into its resubmission all of U.S. EPA's technical comments on TPI's first submission, TPI shall not be required to provide any additional, independent funds for the Sediment Remediation Project Completion Report, and the resubmitted Report shall be deemed final.

57. TPI shall not deduct the cost of the Sediment Remediation Project from its taxes.

#### **H. MISCELLANEOUS**

58. TPI shall be responsible for submitting in a timely fashion applications for federal, state and local permits and approvals for work and activities required under Section VI of this Decree so that permit or approval decisions can be made in a timely fashion. TPI shall use its best efforts to: (i) submit permit and approval applications that comply with all applicable requirements; and (ii) secure approval of permits and approvals after filing the applications, including timely supplying additional information, if requested.

59. U.S. EPA shall use its best efforts to expedite the processing of TPI's applications for federal permits, if any, and to the extent possible, all state and local permits required for the

implementation of the activities set forth in Section VI of this Decree.

60. TPI shall use its best efforts to gain access to property along Horse Creek and the Pine River as needed to perform the work and activities set forth in Section VI of this Decree. If TPI encounters difficulties in securing access, TPI shall keep U.S. EPA's Sediment Remediation Project Coordinator advised of the difficulties. If TPI is unable to gain access after using its best efforts, U.S. EPA shall use its best efforts to help TPI to gain access, as needed. If access is not obtained, the United States may assist TPI in obtaining access, to the extent necessary, to perform the work and activities set forth in Section VI of this Decree using such means as the United States deems necessary. Provided that TPI has used its best efforts, TPI's inability to secure necessary access to property shall constitute a delay or impediment to performance and TPI shall not be obligated to comply with Paragraph 114 of the Force Majeure provisions of this Decree for such delays. Consistent with Paragraph 35, any approved or submitted schedules of implementation may be modified or suspended as necessary pending resolution of access issues; provided however, that if any other activities or work under an approved plan or report can go forward during any period of difficulties over access, the schedule of implementation for those activities or work shall not be modified or suspended.

61. TPI shall have the authority to halt the work set forth in Section VI of this Decree if continuation of the work would cause an imminent and substantial endangerment to the public health or welfare or to the environment. TPI shall give the Office of Regional Counsel of U.S. EPA Region 5 and U.S. EPA's Sediment Remediation Project Coordinator oral notice within one (1) Working Day and written notice within five (5) Working Days of any work stoppage pursuant to this Paragraph. Such notice shall fully explain the reasons for TPI's position that continuation of the

work would cause an imminent and substantial endangerment to public health or welfare or the environment. After oral notification of a work stoppage under this Paragraph, any continued cessation of the project shall be subject to U.S. EPA approval.

62. TPI's agreement to perform and finance the Sediment Remediation Project and to undertake the activities related thereto does not constitute an admission by TPI, either express or implied, of any liability for sediment contamination or to perform any sediment remediation.

#### **VII. CITY OF ALMA SUPPLEMENTAL ENVIRONMENTAL PROJECT**

63. By no later than one hundred eighty (180) days after entry of this Consent Decree, or such longer period as TPI and U.S. EPA shall agree in writing, TPI shall submit to U.S. EPA for review and approval a contract that has been negotiated, but not executed, between TPI and the City of Alma (or an appropriate agency thereof) under which TPI shall agree to undertake activities involving environmental quality assessment, restoration, and/or protection at the Downtown Alma Waterfront Brownfield Area (the "City of Alma SEP"). The "Downtown Alma Waterfront Brownfield Area" or "Area" refers to an approximately eleven (11) acre, multi-parcel area of land located in downtown Alma, bounded by: Mill Pond and the Pine River on the South; Lincoln Avenue on the west; Mechanic Street on the north; and Woodworth Avenue on the east. Exhibit 10 to this Consent Decree depicts the Downtown Alma Waterfront Brownfield Area.

64. The environmental quality assessment, restoration, and/or protection activities undertaken pursuant to Paragraph 63 shall have the general goals of investigating and characterizing the environmental quality of the Area consistent with Part 201 of Michigan's Natural Resources and Environmental Protection Act and with the requirements for an MDEQ-approved Baseline Environmental Assessment; restoring the natural and/or man-made environments within the Area

to beneficial use; and/or performing such activities as are consistent with the protection of the City of Alma's public water sources which are located immediately west of the Area (Drinking Water Well Number 1 and the Pine River Impoundment Intake). All such activities shall be consistent with U.S. EPA's Final Supplemental Environmental Projects Policy (April 10, 1998), and U.S. EPA's guidance document styled Using Supplemental Environmental Projects to Facilitate Brownfields Redevelopment (September 1998). The contract shall not permit the transfer of SEP monies from TPI to the City of Alma; except that, in the implementation of the SEP, TPI may contract with the City of Alma for the performance of legal, administrative, and engineering services, at fair market value, required to implement the SEP.

65. The contract shall specify that TPI shall spend no more than nine hundred thousand (\$900,000) for the assessment, restoration, and/or protection activities. Except as specifically provided in Paragraph 83, in no event shall TPI be required to expend any funds in excess of nine hundred thousand dollars (\$900,000) for the City of Alma SEP, nor shall TPI be otherwise obligated to spend more than nine hundred thousand dollars (\$900,000) to implement and complete all of the tasks and/or obligations pursuant to Section VII of this Consent Decree and pursuant to the U.S. EPA-approved contract for the City of Alma SEP. Except as specifically provided in Paragraph 83, when TPI expends funds in the amount of nine hundred thousand dollars (\$900,000), TPI shall have no obligation to perform any of the tasks described in Section VII, including but not limited to any of the tasks or obligations that TPI has agreed to undertake pursuant to the U.S. EPA-approved contract for the City of Alma SEP.

66. The contract shall contain a detailed description of the tasks to be performed pursuant to the contract and a schedule for completion of those tasks within four years from the date of

U.S. EPA's approval of the contract. U.S. EPA, TPI and the City of Alma may modify the dates set forth in the original contract as necessary to achieve the objectives of this Section VII. TPI shall not be required to comply with the requirements of Paragraph 114 of the Force Majeure provisions of this Decree for seeking delays in the completion dates set forth in the contract: (i) under the circumstances set forth in this Paragraph; or (ii) if U.S. EPA, in its sole discretion and in writing, waives TPI's requirement to comply with Paragraph 114. In addition to Force Majeure events, TPI may raise as bases for delays or impediments to performance of the City of Alma SEP prohibitions or restrictions of federal, state, or local law on the performance of work or activities, adverse weather conditions, difficulties securing access, and/or the failure of a governmental entity to timely act upon a timely-submitted permit or approval application, provided that TPI has used its best efforts to: (i) submit permit and approval applications that comply with all applicable requirements; and (ii) secure approval of permits and approvals after filing the applications, including timely supplying additional information, if requested. If, by operation of this Paragraph, TPI is not required to comply with the requirements of Paragraph 114 of the Force Majeure provisions, TPI shall provide reasonable notice to the U.S. EPA's City of Alma SEP Project Coordinator regarding any delays or impediments to performance, and shall communicate with U.S. EPA's City of Alma SEP Project Coordinator regarding the rescheduling of any originally-scheduled milestone or implementation date. U.S. EPA shall not unreasonably withhold consent to requests for modification of schedules set forth in the approved contract. Nothing in this Paragraph shall limit the rights of U.S. EPA and TPI to agree to modifications of the dates initially set forth in this Decree, or the rights of TPI and the City of Alma, with the approval of U.S. EPA, to agree to modifications of the dates initially set forth in the approved contract. All modifications to any dates initially set forth in this Decree shall

be signed in writing by U.S. EPA and TPI, and all modifications to the dates initially set forth in the approved contract shall be signed in writing by TPI and the City of Alma, with the written approval of U.S. EPA. Neither the United States nor TPI shall be required to file any such modifications with the Court in order for the modifications to be effective. Stipulated penalties shall not accrue nor be due and owing during any period between an originally-scheduled milestone or implementation date and an approved modification to such date; provided however, that U.S. EPA shall retain the right to seek stipulated penalties if U.S. EPA does not approve a modification to a date or dates.

67. Upon receipt of the proposed contract, U.S. EPA shall: (a) approve the contract; (b) disapprove the contract in whole or in part; (c) approve the contract upon specified conditions; or (d) any combination of the above. In undertaking any partial approval or disapproval of the contract, U.S. EPA's City of Alma SEP Project Coordinator shall consult with the City of Alma, and shall take into consideration the City of Alma's position on any areas of potential disapproval. By no later than sixty (60) days after U.S. EPA notifies TPI of its disapproval or its direction to modify the contract, TPI shall submit a modified contract to U.S. EPA for approval, unless the City of Alma does not agree to the proposed modifications. TPI may request an extension to this period, but all such requests by TPI and all responses by U.S. EPA shall be in writing.

68. In the event that a resubmitted contract or portion thereof is disapproved in whole or in part or approved with conditions by U.S. EPA, U.S. EPA may again require TPI to resubmit the contract and/or include the conditions in a further revised contract. If, at any time after U.S. EPA's first disapproval in whole or in part of a resubmitted contract, or U.S. EPA's approval of such resubmitted contract with conditions, TPI disagrees with U.S. EPA's comments on or requests



regarding a resubmitted contract or portion thereof, TPI shall have the right to invoke the administrative dispute resolution provisions of Paragraph 69.

69. Provided that the City of Alma approves a proposed modification, then, by no later than thirty (30) days after receipt of U.S. EPA's request for a second, or later, resubmission of the contract, TPI shall: (i) submit a modified contract that satisfies the conditions or comments of U.S. EPA on the resubmitted contract; or (ii) notify U.S. EPA's City of Alma SEP Project Coordinator and the Office of Regional Counsel of U.S. EPA Region 5, in writing, of TPI's intent to invoke the administrative dispute resolution provisions of this Paragraph. U.S. EPA and TPI shall engage in informal negotiations for a period of thirty (30) days, unless such time is modified by written agreement of U.S. EPA and TPI. If the dispute is not resolved by informal means, TPI shall send a written Statement of Position to U.S. EPA by no later than thirty (30) days following the conclusion of the informal dispute resolution period. Such Statement of Position shall set forth the issue in dispute, the outcome that TPI believes is appropriate, the basis for TPI's position, any factual data, analyses or opinions supporting TPI's position, and any supporting documentation relied upon by TPI. If U.S. EPA concurs with TPI's position, by no later than thirty (30) days after receipt of TPI's Statement of Position, U.S. EPA shall provide notice to TPI of its concurrence. If U.S. EPA does not concur with TPI's position, by no later than thirty (30) days after receipt of TPI's Statement of Position, U.S. EPA shall set forth its Statement of Position, including its position on the issue in dispute, the outcome that U.S. EPA believes is appropriate, the basis for U.S. EPA's position, any factual data, analyses or opinions supporting U.S. EPA's position, and any supporting documentation relied upon by U.S. EPA. By no later than thirty (30) days after U.S. EPA submits its Statement of Position, TPI may submit a Reply. The Director of the Superfund Division of

Region 5 of U.S. EPA will issue a final administrative decision resolving the dispute based on the record before him/her. To the extent that U.S. EPA prevails in whole or in part on its position on the disputed plan or report, or any portion thereof, the decision of the Director shall include the conditions under which U.S. EPA will give final approval of the contract. This decision shall be binding upon TPI. If U.S. EPA prevails in whole or in part on its position with respect to the disputed contract or any portion thereof, TPI shall be liable for stipulated penalties from the date that TPI should have submitted the modified contract until the 31<sup>st</sup> day after the receipt by the Director of the Superfund Division of U.S. EPA's Statement of Position, or TPI's Reply, whichever date is later. If TPI prevails with respect to a given issue under the administrative dispute resolution provisions of this Paragraph, stipulated penalties shall not accrue nor be payable with respect to any such issue(s) on which TPI prevailed.

70. Provided that the City of Alma approves a proposed modification, if TPI does not timely submit a notice invoking the administrative dispute resolution provisions of Paragraph 69, TPI shall be deemed to have accepted U.S. EPA's requested revisions. Any failure by TPI to timely submit a second, or later, contract shall subject TPI to stipulated penalties pursuant to Subparagraph 90k. If TPI does not submit a notice invoking the administrative dispute resolution provisions of Paragraph 69, stipulated penalties shall accrue from the date on which TPI was required to submit the second corrected contract.

71. Upon approval by U.S. EPA, the contract identified in Paragraph 63 shall be incorporated herein as part of this Consent Decree and shall be fully enforceable. TPI shall complete all actions required of it under the contract in accordance with the schedule set forth in the approved contract, unless modified pursuant to Paragraph 66. If TPI fails to meet any deadline established

within the contract, within thirty (30) days of such failure, TPI shall notify U.S. EPA's City of Alma SEP Project Coordinator in writing of such failure, the reason(s) for the failure, and shall set forth a schedule for completing the SEP.

72. If TPI and the City of Alma cannot reach agreement on a contract, or if the City of Alma does not approve a proposed modification to the contract, TPI shall be liable for stipulated penalties pursuant to Paragraph 92 of this Decree.

73. U.S. EPA's City of Alma SEP Project Coordinator is:

Keary Cragan  
Superfund Division, Emergency Response Branch  
Brownfield and Early Action Section  
U.S. EPA Region 5, Mail Code SE-4J  
77 West Jackson Blvd.  
Chicago, IL 60604-3590  
Phone: (312) 353-5669  
Email: [cragan.keary@epa.gov](mailto:cragan.keary@epa.gov)

74. TPI's City of Alma SEP Project Coordinator is:

Sean Horne  
SEP Project Coordinator  
TPI Petroleum, Inc.  
1925 E. Superior St.  
Alma, MI 48801  
Phone: (517) 463-9617  
Email: [sean\\_horne@udscorp.com](mailto:sean_horne@udscorp.com)

75. The City of Alma SEP Project Contact Person for the City of Alma is:

Doug Thomas  
Alma City Manager  
525 E. Superior St.  
P.O. Box 278  
Alma, MI 48801-0278  
Phone: (517) 463-8336  
Email: [dthomas@ci.alma.mi.us](mailto:dthomas@ci.alma.mi.us)